

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

YASIR MEHMOOD et al.,

Petitioners,

v.

U.S. MARSHALS SERVICES,

Respondent.

Case No. 2:16-cv-00417-APG-CWH

SCREENING ORDER

Petitioners Yasir Mehmood, Cameron Bell, Charles Cooper III, Dominique Wells, and Omar Qazi are federal pretrial detainees housed at the Nevada Southern Detention Center ("NSDC").¹ (ECF No. 1-1 at 1). Petitioners have filed a petition for writ of mandamus under 28 U.S.C. § 1361 and three motions to render judgment on the petition. (ECF No. 1-1, 3, 4, 5). Petitioner Mehmood has filed two applications to proceed *in forma pauperis*. (ECF No. 1, 2).

I. PETITION FOR WRIT OF MANDAMUS

In the petition for writ of mandamus, Petitioners allege the following: Petitioners seek an order directing the U.S. Marshals to provide all five petitioners the 31 legal books listed in the petition, access to five free phone calls per day, and 40 hours per week law library access. (ECF No. 1-1 at 1, 4). Petitioners are in the middle of their

¹ The NSDC, a Corrections Corporation of America facility located in Pahrump, Nevada, contracts with the the U.S. Marshal's Service for federal pretrial detention. See CCA at <http://www.cca.com/facilities/nevada-southern-detention-center> (last visited on June 29, 2016); see also U.S. Marshals Service at <http://www.usmarshals.gov/prisoner/index.html> (last visited on June 29, 2016).

1 criminal cases and do not have a meaningful opportunity to prepare for their defense.
2 (*Id.* at 1). They are asserting their right to self-representation in their criminal cases and
3 have not been given the opportunity to contact others for assistance. (*Id.*) Petitioners'
4 due process rights have been violated because there are no law books in the law
5 library, their telephone use is restricted through the commissary, they have inadequate
6 time in the law library, and they are not entitled to free legal photocopies or legal mail.
7 (*Id.*) Petitioners cannot call public law libraries, investigators, paralegals, or expert
8 witnesses because there is no telephone book in the facility. (*Id.*) The U.S. Marshals
9 have an obligation "to provide law books and other tools to prepare the defense and to
10 review discovery." (*Id.* at 2). Petitioners specifically seek: (a) the 31 law books
11 specified in the petition; (b) law library access for 40 hours per week; (c) five free legal
12 phone calls per day; (d) lined pleading paper; (e) 300 free legal photocopies per week;
13 (f) free stationary supplies such as flex pen, pencils, erasers, pencil sharpeners,
14 highlighters, and correction tape; or (g) to be transferred to any Bureau of Prisons
15 facility which follows proper rules and regulations for legal access. (*Id.* at 3-4).

16 Pursuant to 28 U.S.C. § 1361, "[t]he district courts shall have original jurisdiction
17 of any action in the nature of mandamus to compel an officer or employee of the United
18 States or any agency thereof to perform a duty owed to the plaintiff." Mandamus relief
19 is only available to compel an officer or agency of the United States to perform a duty if:
20 (1) the plaintiff's claim is clear and certain; (2) the duty of the officer is ministerial and so
21 plainly prescribed as to be free from doubt; and (3) no other adequate remedy is
22 available. *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9th Cir. 1986).

23 The Court denies Petitioners' petition for writ of mandamus because Petitioners
24 have not satisfied the three-part mandamus test. First, Petitioners have not established
25 that their claims to their specified legal supplies and specified law library access and
26 materials are clear and certain. See *Milton v. Morris*, 767 F.2d 1443, 1446 (9th Cir.
27 1985) (holding that "a [criminal] defendant who chooses to represent himself does not
28 have a due process right of access to a court maintained library, so long as he is

1 afforded some alternative means for assistance in the preparation of his defense” but
2 debating what constitutes alternative means for assistance).

3 Second, Petitioners have not established that the U.S. Marshals Service has a
4 ministerial duty to give Petitioners the requested legal supplies and law library access.
5 Although Petitioners cite to three federal statutes—18 U.S.C. § 3142, 18 U.S.C. § 4002,
6 and 18 U.S.C. § 4013—these statutes do not speak to the availability of legal materials.

7 Finally, the Court finds that Petitioners have the ability to file a 42 U.S.C. § 1983
8 complaint and seek injunctive relief against the employees of the NSDC for the lack of
9 reasonable access to the resources necessary to prepare for their defense.² As such,
10 the Court denies the petition for writ of mandamus (ECF No. 1-1) and the motions to
11 render judgment on the petition (ECF No. 3, 4, 5). However, the Court will treat the
12 petition as a § 1983 complaint and screen the petition as if it were filed as a § 1983
13 complaint.

14 **II. SCREENING STANDARD**

15 Federal courts must conduct a preliminary screening in any case in which a
16 prisoner seeks redress from a governmental entity or officer or employee of a
17 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify
18 any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a
19 claim upon which relief may be granted or seek monetary relief from a defendant who is
20 immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however,
21 must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
22 Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
23 essential elements: (1) the violation of a right secured by the Constitution or laws of the
24 United States, and (2) that the alleged violation was committed by a person acting

25
26 ² Although the Supreme Court has limited an inmate’s ability to bring a *Bivens*
27 damages action against a private entity under contract with the federal government and
28 its employees, the Supreme Court has acknowledged an inmate’s ability to bring a suit
to federal court for injunctive relief against the federally contracted private entity. See
Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 74 (2001) (holding that inmates have full
access to remedial mechanisms established by the federal agency, including suits in
federal court for injunctive relief).

1 under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison
3 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the
4 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a
5 claim on which relief may be granted, or seeks monetary relief against a defendant who
6 is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for
7 failure to state a claim upon which relief can be granted is provided for in Federal Rule
8 of Civil Procedure 12(b)(6), and the court applies the same standard under § 1915 when
9 reviewing the adequacy of a complaint or an amended complaint. When a court
10 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
11 complaint with directions as to curing its deficiencies, unless it is clear from the face of
12 the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
13 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
15 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
16 failure to state a claim is proper only if it is clear that the plaintiff cannot prove any set of
17 facts in support of the claim that would entitle him or her to relief. See *Morley v. Walker*,
18 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true
19 all allegations of material fact stated in the complaint, and the court construes them in
20 the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957
21 (9th Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards
22 than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
23 While the standard under Rule 12(b)(6) does not require detailed factual allegations, a
24 plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*
25 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause
26 of action is insufficient. *Id.*

27 Additionally, a reviewing court should "begin by identifying pleadings [allegations]
28 that, because they are no more than mere conclusions, are not entitled to the

1 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal
 2 conclusions can provide the framework of a complaint, they must be supported with
 3 factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court
 4 should assume their veracity and then determine whether they plausibly give rise to an
 5 entitlement to relief.” *Id.* “Determining whether a complaint states a plausible claim for
 6 relief . . . [is] a context-specific task that requires the reviewing court to draw on its
 7 judicial experience and common sense.” *Id.*

8 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
 9 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
 10 includes claims based on legal conclusions that are untenable (e.g., claims against
 11 defendants who are immune from suit or claims of infringement of a legal interest which
 12 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 13 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28
 14 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

15 **III. SCREENING OF COMPLAINT**

16 The Court interprets Petitioners’ allegations as a claim to the right to self-
 17 representation under *Faretta v. California*, 422 U.S. 806 (1975). In *Milton v. Morris*, the
 18 Ninth Circuit held that “a defendant who exercises his right, under *Faretta*, to conduct
 19 his own defense [does not] subject himself to the possibility that he will have, through
 20 circumstances wholly beyond his control, no opportunity to prepare that defense.”
 21 *Milton v. Morris*, 767 F.2d 1443, 1445 (9th Cir. 1985). Although an incarcerated
 22 defendant may not meaningfully exercise his right to represent himself without access to
 23 law books, witnesses, or other tools to prepare a defense, this right is not unlimited and
 24 must be considered in light of security and avoidance of abuse. *Id.* at 1446.

25 The Court dismisses the case, without prejudice, for each petitioner to file his
 26 own complaint which provides allegations specific to that petitioner. The allegations, as
 27 presented in the petition for writ of mandamus, lack the necessary details to proceed in
 28 a § 1983 action. In filing their individual complaints, each petitioner should allege what

1 legal resources they have access to, what legal resources they need and why, who at
2 NSDC have they contacted about this issue and the responses, and whether Petitioners
3 have filed motions seeking specific legal resources in their own individual criminal
4 cases. The Court finds that these allegations will be specific to each petitioner and
5 directs Petitioners to file individual § 1983 civil rights complaints and individual
6 applications to proceed *in forma pauperis* in their own individual lawsuits. As such, the
7 Court denies Petitioner Mehmood's applications to proceed *in forma pauperis* (ECF No.
8 1, 2) as moot.

9 **IV. CONCLUSION**

10 For the foregoing reasons, **IT IS ORDERED** that the applications to proceed *in*
11 *forma pauperis* (ECF No. 1, 2) are denied as moot.

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the petition for
13 writ of mandamus (ECF No. 1-1).

14 **IT IS FURTHER ORDERED** that the petition for writ of mandamus (ECF No. 1-1)
15 is denied.

16 **IT IS FURTHER ORDERED** that the motions to render judgment on the petition
17 (ECF No. 3, 4, 5) are denied.

18 **IT IS FURTHER ORDERED** that Petitioners shall not file any more documents in
19 this case. If Petitioners choose to pursue individual 42 U.S.C. § 1983 civil rights
20 lawsuits based on the allegations in the petition, they may do so by individually filing
21 their own § 1983 complaints and applications to proceed *in forma pauperis* in their own
22 individual cases.


23 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send each petitioner
24 the approved form for filing a § 1983 complaint, instructions for the same, and a copy of
25 the petition for writ of mandamus (ECF No. 1-1). If Petitioners choose to file their own
26 individual complaints, they must use the approved form.

27 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send each petitioner
28 the approved form application to proceed *in forma pauperis* by a prisoner, as well as the

1 document entitled information and instructions for filing an *in forma pauperis* application.

2 **IT IS FURTHER ORDERED** that the Clerk of the Court is instructed to close this
3 case and enter judgment accordingly.

4 Dated: June 30, 2016.

5 
6

UNITED STATES DISTRICT JUDGE